

Operating Agreement Between the City of Tuscaloosa and Red Mountain Entertainment



Who is Red Mountain Entertainment?

Red Mountain Entertainment (RME) is a concert and event promotions company, whose principals have 105 years of combined experience in the concert and festival promotion and venue management businesses.

RME has extensive experience in promoting concerts throughout the United States.

Who is Red Mountain Entertainment?

Over the years, RME has promoted concerts including: The Rolling Stones, Pink Floyd, U2, Kenny Chesney, Jimmy Buffett, Tim McGraw and Faith Hill, Keith Urban, Taylor Swift, Kings of Leon, Widespread Panic, Wilco, Sonic Youth, Hank Williams, Jr., Kid Rock, John Mayer, The Dave Matthews Band, Bob Dylan, 3 Doors Down, Motley Crue, Brooks & Dunn, and Tom Petty and The Heartbreakers

Who is Red Mountain Entertainment?

RME has expertise in the amphitheater business. RME's principals developed, constructed, and managed the 10,000 seat Oak Mountain Amphitheatre in Birmingham, Alabama for over 20 years. RME currently consults and books The Amphitheater at The Wharf, a 9,600 capacity outdoor music venue in Orange Beach, Alabama.

In 2008, the City contracted with RME for services related to the construction, operations and management of the Tuscaloosa Amphitheater.



Challenges

1. Federal Tax Law
2. State Sales Tax
3. Venue Control

Federal Tax Law

In order to prevent otherwise non-taxable public activity bonds from becoming taxable private activity bonds, the IRS Code prohibits profit sharing between a public entity and a private entity in the management or operation of a facility constructed with tax-exempt financing.

Issuing a Revenue Pledge would save the public debt from becoming private activity, but the Amphitheater Bond Issue was a General Obligation Pledge, which saved the City hundreds of thousands of dollars in interest, but also satisfied an IRS test as to when public debt becomes private activity, and therefore taxable.

For that reason, the agreement meets several “safe harbor” provisions in the IRS regulations in order to avoid a declaration of private activity.”

State Sales Tax

According to State Law, a sales tax is imposed upon all gross revenues of any amusement venue. We have addressed this issue by maintaining control of the Amphitheater and conducting the business of the Amphitheater.

If RME were to control the operation of the Amphitheater, then all revenues would be subject to this state sales tax.

Venue Control

Initially, the agreement would have provided that RME operate the Amphitheater by being its exclusive manager. With the previously stated challenges, we had to reduce RME's role so that the City would be "operating" and "in control" of the Amphitheater.

Amphitheater employees will be funded by the City and then the City will be reimbursed via the clearing account.

Clearing Account

The Clearing Account is an account established at a local bank by RME from which expenses incurred for the Amphitheater are paid.

RME will use the Clearing Account to pay for event-related expenses such as site security, parking control, booking deposits, advances, ushers, concessions, etc.

Expenses incurred by the City, such as utilities, salaries for amphitheater employees, and maintenance can also be paid for by the Clearing Account.

Clearing Account (continued)

The Clearing Account must maintain a \$400,000 minimum balance.

The City will have access to all account statements, records of deposits to and withdrawals, payments, wire transfers, and all other account information.

All revenues and receipts generated by the Amphitheater shall be deposited into the Clearing Account and held in trust for the payments of operating costs.

The Clearing Account will be audited annually by the City's Auditor.

Services and Compensation

1. RME will receive monthly compensation in the amount of \$12,500 beginning _____, 2010.
2. This is compensation for providing the following services:

Booking, advertising, and promoting events to take place at the Amphitheater. Consultant shall be responsible for all negotiation, contracting, payment of any applicable licensing fees, deposits, legal fees, advertising, and associated activities relating to the booking and promoting of such events.

Operation and management of all concessions.

Providing site security, parking control and security for events and appropriate crowd control.

Services and Compensation (continued)

Compliance with all policies, procedures and agreements relating to cash handling and accounting for Amphitheater-related revenue and expenses.

Following all applicable standards of care relating to safe operations of similar facilities and events.

Employment of all staff or persons necessary or required to meet Consultant's obligations.

Ensuring appropriate tax collection from Amphitheater-related sales.

Creating, hosting, and maintaining an informational and promotional website related solely to the Amphitheater and related events.

Services and Compensation (continued)

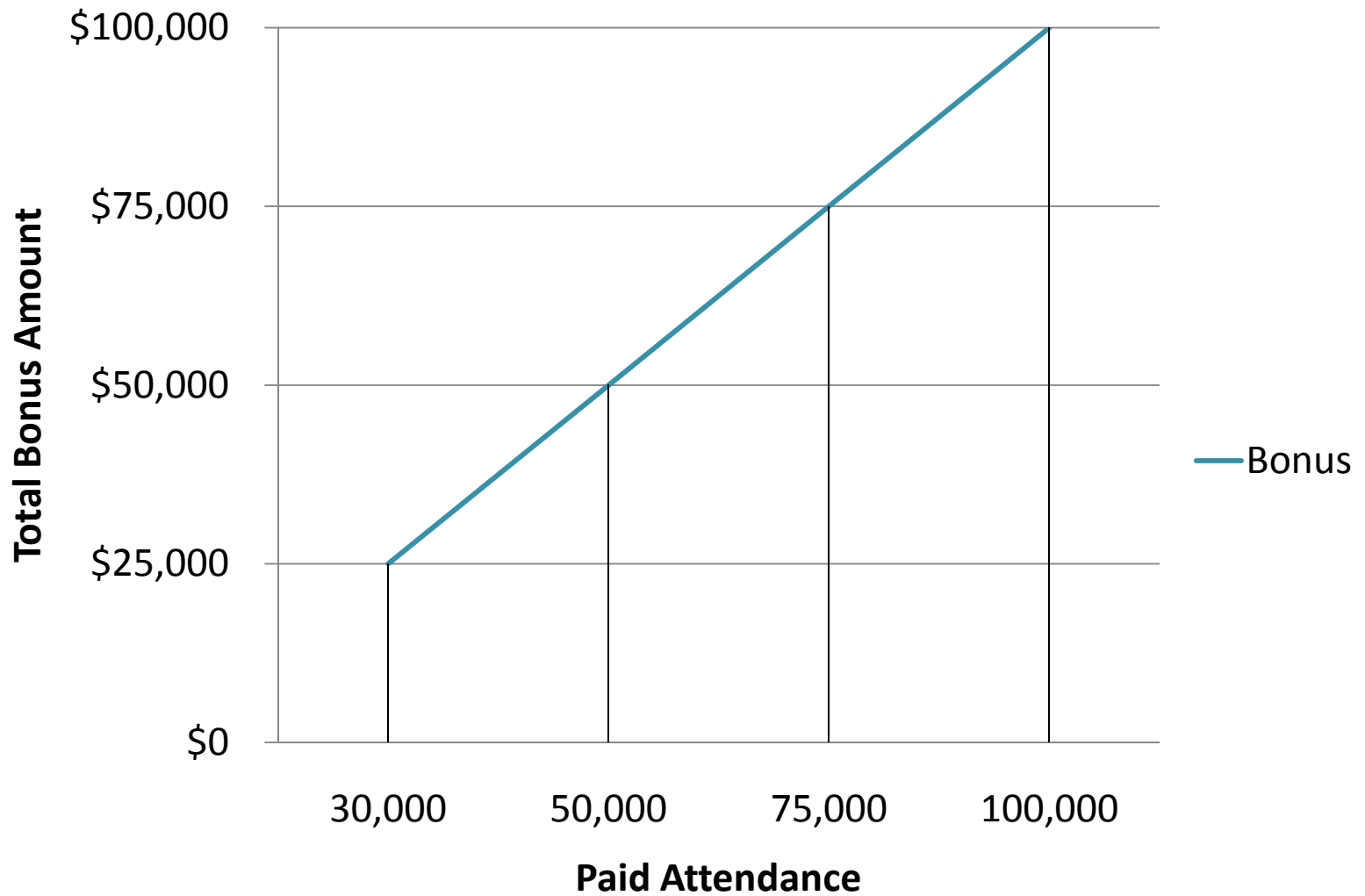
In addition to the \$12,500 monthly compensation, Red Mountain will receive an attendance bonus.

The attendance bonus will be based upon minimum annual paid attendance (full price) at major events and to the extent the overall operation of the Amphitheater results in a net profit for the City

Services and Compensation (continued)

Attendance Bonuses are based upon minimum annual paid attendance at Major Events. “Paid attendance” means full-price admission tickets. For each paid attendance threshold met in 2011 and in subsequent years, RME will receive an annual bonus amounts as reflected in the following chart:

Services and Compensation



Tuscaloosa's Responsibility

Provide law enforcement security for each Major Event, excluding "Community Events," the number of law enforcement officers per event being determined by the City.

Provide sufficient Emergency Medical Service personnel for each Major Event.

Purchase of supplies and payment for utility usage fees relating to the operation of the Amphitheater.

Tuscaloosa's Responsibility (continued)

Cleaning, general upkeep and light maintenance.

In addition, the City shall enter into a funding agreement with PARA to employ the positions of “Director of the Amphitheater Facility” and “Box Office Manager.” The Director of the Amphitheater Facility and the Box Office Manager will be employees of PARA in cooperation with the Arts and Humanities Council of Tuscaloosa, and they will oversee all ticket sales and related functions for events.